

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

K P H J, INC., a Washington)	No. 62406-7-I
corporation,)	
)	DIVISION ONE
Respondent,)	
)	
v.)	
)	
BILL KNAUSS, and any other persons)	UNPUBLISHED
residing at 1408 Gulf Road, Space #10,)	
Point Roberts, Washington,)	FILED: <u>July 27, 2009</u>
)	
Appellant.)	
)	
)	

Cox, J. — A statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving beyond a reasonable doubt its unconstitutionality.¹ Because William Knauss has failed in his burden to prove beyond a reasonable doubt that RCW 59.20.080 is unconstitutional, we affirm.

KPHJ, Inc., a Washington corporation, operates a mobile home park in Whatcom County. Knauss leased a space on the property. He failed to pay any rent after September 2007.

KPHJ properly commenced this unlawful detainer action in February 2008. The trial court denied multiple motions by Knauss to dismiss the action.

¹ Madison v. State, 161 Wn.2d 85, 92, 163 P.3d 757 (2007).

After a show cause hearing, the trial court terminated Knauss' tenancy and directed the issuance of a writ of restitution. The trial court also entered a monetary judgment against Knauss for unpaid rent and reasonable attorney fees and costs.

Knauss appeals.

TERMINATION OF TENANCY

Knauss argues that KPHJ's termination of his tenancy under a provision of the Manufactured/Mobile Home Landlord Tenant Act (MHLTA), RCW 59.20.080, was an unconstitutional taking, in violation of the Fifth Amendment of the United States Constitution and article I, section 16 of the Washington State Constitution. We disagree.

KPHJ does not provide a substantive response to these constitutional challenges. Rather, it contends that Knauss' attack on the statute constitutes a declaratory judgment action in which he failed to serve the state attorney general, as required by RCW 7.24.110. Such service is a jurisdictional requirement in declaratory judgment actions challenging the constitutionality of a statute.²

We conclude that this response does not avoid the need to address the substance of the constitutional challenge. A challenge to the constitutionality of a statute in the course of a legal action does not convert that action into a

² Watson v. Wash. Preferred Life Ins. Co., 81 Wn.2d 403, 407, 502 P.2d 1016 (1972).

declaratory judgment proceeding.³ “The distinctive characteristic of a declaratory judgment action is that it determines the rights of parties to a justiciable controversy before a wrong is committed or a loss incurred.”⁴

This action is the special statutory proceeding of unlawful detainer, not a declaratory judgment action. Thus, Knauss’ failure to serve the attorney general is an insufficient basis on which to resolve the constitutional challenges here. Accordingly, we address the constitutional claims.

The Fifth Amendment prohibits governmental taking of private property “for public use without just compensation.”⁵ Article I, section 16 of the Washington Constitution provides that “[p]rivate property shall not be taken for private use.”⁶ A statute is presumed to be constitutional, and the party challenging its constitutionality bears the burden of proving beyond a reasonable doubt its unconstitutionality.⁷

RCW 59.20.080 provides that a landlord may not terminate or fail to renew a tenancy except for thirteen specifically enumerated reasons, predominantly relating to failure to pay rent, substantial violation of the mobile home park rules, disorderly conduct, or creating a nuisance.⁸ The tenant must

³ Id. at 407-08.

⁴ Id. at 407.

⁵ U.S. Const. amend. V.

⁶ Const. art. I, § 16.

⁷ Madison, 161 Wn.2d at 92.

⁸ RCW 59.20.080(1); Wash. State Bar Ass’n, Washington Real Property

be given notice of the specific grounds and an opportunity to cure within a stated time period.⁹

Here, it is undisputed that Knauss failed to pay the rent when due. Moreover, Knauss does not claim that KPHJ failed to follow strictly the statutory procedures to terminate his tenancy at the mobile home park.

Knauss argues that the statute is unconstitutional to the extent it allows a landlord to terminate a “privately owned **tenancy**.”¹⁰ According to him, “A tenancy is the mobile home owners [sic] privately owned interest in real property.”¹¹ He also asserts that the statute “permits mobile home park owners, to take private property for their own private use.”¹²

Knauss’ arguments primarily rely on our supreme court’s decision in Manufactured Housing Communities of Washington v. State.¹³ That case involved a constitutional takings challenge to a statute that granted a right of first refusal to tenants of mobile home parks.¹⁴ The court concluded that the grant to tenants of a right of first refusal to purchase the property adversely affected a

Deskbook § 15.3(2)(f), at 15-24 (1997).

⁹ RCW 59.20.080.

¹⁰ Brief of Appellant at 10-11 (emphasis added).

¹¹ Brief of Appellant at 14.

¹² Id.

¹³ 142 Wn.2d 347, 13 P.3d 183 (2000).

¹⁴ Id. at 350-51.

park owner's right to dispose of land, one of the three "fundamental attribute[s] of property ownership."¹⁵ The court held that the statute resulted in the state transferring ownership of the property from one private owner, the park owner, to another private owner, the tenants of the park.¹⁶ This did not constitute a public use, and therefore violated article I, section 16 of the Washington State Constitution.¹⁷

This case is not analogous to Manufactured Housing. Knauss has not shown that, in losing his tenancy, he has lost a fundamental attribute of property ownership.¹⁸ Nor does the statute result in the state transferring ownership of property from one private owner to another. The landlord continues to own the property throughout the tenancy. The tenant has the right to possess,¹⁹ which is conditioned on the payment of rent and the other duties outlined in the statute.²⁰

Knauss also claims that the MHLTA provides for an unconstitutional taking because the value of the tenant's mobile home is significantly decreased

¹⁵ Id. at 364 (quoting Guimont v. Clarke, 121 Wn.2d 586, 595, 854 P.2d 1 (1993)).

¹⁶ Id. at 374.

¹⁷ Id.

¹⁸ See id. at 368 ("Property consists mainly of three powers: possession, use, and disposition.").

¹⁹ See, e.g., RCW 59.20.080 (limited grounds for termination of tenancy); .130 (duties of landlord).

²⁰ RCW 59.20.140 ("It shall be the duty of the tenant to pay the rental amount at such times and in such amounts as provided for in the rental agreement or as otherwise provided by law . . .").

when the tenant must relocate the mobile home. He fails to cite any authority for this proposition. In any event, he would not have lost his tenancy, and therefore any asserted value in his property, had he paid rent. Moreover, a reduction in the value of property is not necessarily a taking in the constitutional sense.²¹

Knauss next argues that the act brought about a total taking of all economically viable use of his property. Again, he fails to cite anything in this record to support this claim. In any event, we note that the act gives mobile home owners who fail to pay rent an opportunity to restore their interest in the land by paying rent within five days of proper written notice to pay.²²

We conclude that Knauss has failed to meet the heavy burden of proving beyond a reasonable doubt that RCW 59.20.080 is unconstitutional.

Knauss argues, for the first time in his reply, that the trial court's orders were void because KPHJ did not comply with a local court rule and the statute of frauds. Arguments first raised in a reply brief are not generally addressed.²³ Accordingly, we do not address these arguments.

ATTORNEY FEES

KPHJ is entitled to costs and attorney fees on appeal under RCW 59.20.040, 59.18.410, and RAP 14.3, subject to its timely compliance with RAP

²¹ Andrus v. Allard, 444 U.S. 51, 66, 100 S. Ct. 318, 62 L. Ed. 2d 210 (1979).

²² RCW 59.20.080(1)(b).

²³ Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); see RAP 10.3(c).

18.1.

We affirm the judgment.

Cox, J.

WE CONCUR:

Elemyon, J.

Ajda, J.